

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 2

CONSTRUCTION AND GENERAL PROVISIONS

700.1201 Purposes; rules of construction.

Sec. 1201. This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

- (a) To simplify and clarify the law concerning the affairs of decedents, missing individuals, protected individuals, minors, and legally incapacitated individuals.
- (b) To discover and make effective a decedent's intent in distribution of the decedent's property.
- (c) To promote a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors.
- (d) To make the law uniform among the various jurisdictions, both within and outside of this state.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1203 Supplementary general principles of law applicable; construction against implied repeal.

Sec. 1203. (1) Unless displaced by the particular provisions of this act, general principles of law and equity supplement this act's provisions.

(2) This act is a general act intended as a unified coverage of its subject matter and a part of it shall not be considered impliedly repealed by subsequent legislation if that result can reasonably be avoided.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1205 Discovery and remedies for fraud, embezzlement, conversion, or withholding of assets.

Sec. 1205. (1) The court may order a person to appear before the court and be examined upon the matter of a complaint that is filed with the court under oath by a fiduciary, beneficiary, creditor, or another interested person of a decedent's or ward's trust or estate alleging any of the following:

- (a) The person is suspected of having, or has knowledge that another may have, concealed, embezzled, conveyed away, or disposed of the trustee's, decedent's, or ward's property.
- (b) The person has possession or knowledge of a deed, conveyance, bond, contract, or other writing that contains evidence of, or tends to disclose, the right, title, interest, or claim of the trustee, decedent, or ward to any of the trust or estate.
- (c) The person has possession or knowledge of a decedent's last will.

(2) If the person ordered under subsection (1) refuses to appear and be examined, or refuses to answer the interrogatories asked of the person that relate to the complaint, the judge may by warrant commit the person to the county jail to remain in custody until that person submits to the order of the court.

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. An action under this subsection shall be commenced within 2 years after the discovery of the fraud, but an action shall not be brought against a person that is not a perpetrator of the fraud later than 5 years after the time of the fraud's commission. This section does not affect a remedy relating to fraud perpetrated against a decedent during his or her lifetime that affects the succession of the decedent's estate.

(4) If a person embezzles or wrongfully converts a decedent's property before letters of authority are granted, or refuses, without colorable claim of right, to transfer possession of the decedent's property to the personal representative upon demand, that person is liable in an action brought by the personal representative for the benefit of the estate for double the value of the property embezzled, converted, or withheld.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1207 Evidence of death or status.

Sec. 1207. In addition to the rules of evidence in courts of general jurisdiction, the court shall determine

death or status in accordance with the following:

(a) Death occurs when an individual is determined to be dead under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034.

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the decedent's identity and of the fact, place, date, and time of the decedent's death.

(c) A certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the individual's status and of the dates, circumstances, and places disclosed by the record or report.

(d) In the absence of prima facie evidence of death under subdivision (b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(e) The fact of death may be established under the procedure prescribed in section 1208 to establish the death of an individual described in that section.

(f) At the hearing upon the petition, the court upon its own motion may, or upon motion of an interested person shall, impanel a jury as provided by law. If it is established by a preponderance of the evidence presented at the hearing that an accident or disaster occurred in which the individual named in the petition was killed or may be presumed to have died, the court shall enter an order that establishes the location of the accident or disaster, the date of death, and, if possible, the time of death and that states that the individual is dead.

(g) A certified copy of an order issued under this section is sufficient when presented to the medical examiner for the preparation of a certificate of death. The medical examiner shall forward the completed certificate of death to the state registrar. The state registrar shall register the death as provided in section 2845 of the public health code, 1978 PA 368, MCL 333.2845. The state registrar shall forward a copy of the registered death record to the local registrar of the place where the death occurred as established under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1208 Procedure to establish death of accident or disaster victim.

Sec. 1208. (1) The procedure to establish the death of an individual who is an accident or disaster victim and whose remains have disappeared or are unidentifiable is as follows:

(a) If an accident or disaster occurs that apparently causes the death of the individual described in this section, any of the following individuals may petition the court for a determination of the cause and date of the presumed decedent's death:

(i) The medical examiner, sheriff, or prosecutor of a county described in subdivision (b).

(ii) The spouse or a next of kin, heir at law, devisee, personal representative named in a will, or creditor or debtor of the presumed decedent.

(b) Venue for a proceeding under this section is in 1 of the following:

(i) The court in a county in which the accident or disaster or any part of the accident or disaster occurs.

(ii) If the accident or disaster occurs upon or within the Great Lakes or their connecting waters, the court in a county adjacent to the scene of the accident or disaster.

(iii) If the accident or disaster did not occur in Michigan or adjoining waters, the court in the county of the presumed decedent's domicile.

(c) A petition to determine the cause and date of death as provided in this section shall not be filed less than 63 days or more than 7 years after the occurrence of the accident or disaster.

(d) A petition under this section shall set forth the facts and circumstances concerning the accident or disaster, the reasons for the belief that the presumed decedent died in the accident or disaster, that the presumed decedent has disappeared or is unidentifiable, and the names and addresses of all individuals known or believed to be heirs at law of the presumed decedent.

(e) Upon the filing of a petition under this section, the court shall fix the time and place for a hearing. The petitioner shall give or cause to be given notice of the hearing as provided by supreme court rule.

(2) An individual whose death is not otherwise established under this section or section 1207, who is absent for a continuous period of 5 years during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence to determine that death occurred earlier.

(3) In the absence of evidence disputing the time of death stated on a document described in section 1207(b), (c), or (g), a document described in section 1207(b), (c), or (g) that states a time of death 120 hours

or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1209 Acts by holder of power of appointment.

Sec. 1209. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable or testamentary general or special power of appointment, including 1 in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: EPIC

700.1210 Cost-of-living adjustment.

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) Before February 1, 2001, and annually after 2001, the department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amounts referred to in subsection (1) for decedents who die during that calendar year and in section 7414 for trusts the value of the property of which is insufficient to justify the cost of administration. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest \$1,000.00 amount.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1211 Court personnel prohibited from providing legal advice.

Sec. 1211. Court personnel shall not provide or offer to provide legal advice or legal counsel to a fiduciary or an interested person and shall not complete a form, petition, or document for a fiduciary or interested person. This section does not prohibit the court from providing general information, blank forms, and information concerning the preparation of a form provided by the court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.1212 Fiduciary relationship.

Sec. 1212. (1) A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7803 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.

(2) Except in response to legal process, in cases expressly required by law, or in the necessary or proper administration of the estate, a fiduciary shall not disclose facts or knowledge pertaining to property in the fiduciary's possession or to the affairs of those for whom the fiduciary is acting in any manner without the consent of the heirs, devisees, beneficiaries, protected individuals, or wards. The fiduciary of a minor or an incapacitated individual may give this consent on behalf of that individual. This subsection's restriction on disclosure does not apply in an action or proceeding in which the fiduciary and the fiduciary's heir, devisee, beneficiary, protected individual, or ward are parties adverse to each other after the identity and relationship is determined and established.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.1213 Reference to unified credits, exemption, or deductions.

Sec. 1213. If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero or the lowest possible amount payable by describing a portion or amount measured by reference to the unified credit, the exemption equivalent, other credits, or other deductions, then unless specifically stated otherwise, the reference to the credits, exemption, or deductions shall be considered to include a reference to the family-owned business deduction available under section 2057 of the internal revenue code of 1986, 26 USC 2057, if that deduction is elected. Unless specifically stated otherwise, and subject to section 2723, the reference to the unified credit or exemption equivalent, or to the family-owned business deduction, shall be considered to refer to the credit, exemption, or deduction as it exists at the time of death of the individual.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2010, Act 224, Imd. Eff. Dec. 10, 2010.

Popular name: EPIC

700.1214 Fiduciary; prohibited conduct.

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC